

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 561

Introduced by Assembly Member Walters

February 21, 2007

An act to amend Sections ~~19521, 19734, 19736, 19736~~ and 19777.5 of, and to add Sections 19777.6, 19777.7, and 19777.8 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 561, as amended, Walters. Taxation: tax amnesty program.

Existing law requires the Franchise Tax Board to administer tax amnesty programs during the period beginning February 1, 2005, and ending on March 31, 2005, inclusive, or during any other 2-month period ending before June 30, 2005, as provided. Existing law generally disallows an income tax or corporate tax credit or refund from being made after a period ending 4 years from the date the return was filed, 4 years from the last day prescribed for filing the return, or one year from the date of the overpayment, whichever period expires later, unless before the expiration of that period a claim is filed by the taxpayer for the credit or refund.

This bill would ~~increase the interest rate required to be paid to corporations that overpaid amounts under a tax amnesty program, as specified. This bill would~~ increase the interest rate required to be paid by taxpayers that qualified for an amnesty program, but did not pay the tax due before the end of the amnesty program that ended on March

31, 2005, as provided. This bill would authorize the Chief Counsel of the Franchise Tax Board, or his or her designee, to review and abate all or any portion of the amnesty penalty, as provided. This bill would also authorize a tax refund or credit to be made for one year after the operative date of the bill, even if one year has elapsed since the date of an overpayment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 19521 of the Revenue and Taxation Code~~
2 ~~is amended to read:~~
3 ~~19521. (a) The rate established under this section (referred to~~
4 ~~in other code sections as “the adjusted annual rate”) shall be~~
5 ~~determined in accordance with Section 6621 of the Internal~~
6 ~~Revenue Code, except that:~~
7 ~~(1) (A) For taxpayers other than corporations, the overpayment~~
8 ~~rate specified in Section 6621(a)(1) of the Internal Revenue Code~~
9 ~~shall be modified to be equal to the underpayment rate determined~~
10 ~~under Section 6621(a)(2) of the Internal Revenue Code.~~
11 ~~(B) In the case of any corporation, for purposes of determining~~
12 ~~interest on overpayments for periods beginning before July 1,~~
13 ~~2002, the overpayment rate specified in Section 6621(a)(1) of the~~
14 ~~Internal Revenue Code shall be modified to be equal to the~~
15 ~~underpayment rate determined under Section 6621(a)(2) of the~~
16 ~~Internal Revenue Code.~~
17 ~~(C) Except as provided in Section 19734, in the case of any~~
18 ~~corporation, for purposes of determining interest on overpayments~~
19 ~~for periods beginning on or after July 1, 2002, the overpayment~~
20 ~~rate specified in Section 6621(a)(1) of the Internal Revenue Code~~
21 ~~shall be modified to be the lesser of 5 percent or the bond~~
22 ~~equivalent rate of 13-week United States Treasury bills, determined~~
23 ~~as follows:~~
24 ~~(i) The bond equivalent rate of 13-week United States Treasury~~
25 ~~bills established at the first auction held during the month of~~
26 ~~January shall be utilized in determining the appropriate rate for~~
27 ~~the following July 1 to December 31, inclusive. Any such rate~~
28 ~~shall be rounded to the nearest full percent (or, if a multiple of~~

1 one-half of 1 percent, that rate shall be increased to the next highest
2 full percent):

3 (ii) ~~The bond equivalent rate of 13-week United States Treasury~~
4 ~~bills established at the first auction held during the month of July~~
5 ~~shall be utilized in determining the appropriate rate for the~~
6 ~~following January 1 to June 30, inclusive. Any such rate shall be~~
7 ~~rounded to the nearest full percent (or, if a multiple of one-half of~~
8 ~~1 percent, that rate shall be increased to the next highest full~~
9 ~~percent):~~

10 (2) ~~The determination specified in Section 6621(b) of the~~
11 ~~Internal Revenue Code shall be modified to be determined~~
12 ~~semiannually as follows:~~

13 (A) ~~The rate for January shall apply during the following July~~
14 ~~through December, and~~

15 (B) ~~The rate for July shall apply during the following January~~
16 ~~through June.~~

17 (b) (1) ~~For purposes of this part, Part 10 (commencing with~~
18 ~~Section 17001), Part 11 (commencing with Section 23001), and~~
19 ~~any other provision of law referencing this method of computation;~~
20 ~~in computing the amount of any interest required to be paid by the~~
21 ~~state or by the taxpayer, or any other amount determined by~~
22 ~~reference to that amount of interest, that interest and that amount~~
23 ~~shall be compounded daily.~~

24 (2) ~~Paragraph (1) shall not apply for purposes of computing the~~
25 ~~amount of any addition to tax under Section 19136 or 19142.~~

26 (c) ~~Section 6621(c) of the Internal Revenue Code, relating to~~
27 ~~increase in underpayment rate for large corporate underpayments;~~
28 ~~is modified as follows:~~

29 (1) ~~The applicable date shall be the 30th day after the earlier of~~
30 ~~either of the following:~~

31 (A) ~~The date on which the proposed deficiency assessment is~~
32 ~~issued.~~

33 (B) ~~The date on which the notice and demand is sent.~~

34 (2) ~~This subdivision shall apply for purposes of determining~~
35 ~~interest for periods after December 31, 1991.~~

36 (3) ~~Section 6621(c)(2)(B)(iii) of the Internal Revenue Code~~
37 ~~shall apply for purposes of determining interest for periods after~~
38 ~~December 31, 1998.~~

~~(d) Section 6621(d) of the Internal Revenue Code, relating to the elimination of interest on overlapping periods of tax overpayments and underpayments, shall not apply.~~

~~(e) The amendments made to this section by the act adding this subdivision shall apply as of the effective date of that act.~~

~~SEC. 2. Section 19734 of the Revenue and Taxation Code is amended to read:~~

~~19734. (a) Notwithstanding any other provision of this chapter, if any overpayment of tax shown on an original or amended return filed under this article is refunded or credited within 180 days after the return is filed, no interest shall be allowed under Section 19340 on that overpayment.~~

~~(b) (1) In the case of any corporation, for purposes of determining interest on overpayments attributable to tax deposit payments made under Section 19041.5 on or after January 1, 2005, and on or before the end of the amnesty period specified in Section 19731 that were not paid to satisfy an existing final liability, including final deficiencies and self-assessed amounts, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate specified in Section 6621(a)(2) of the Internal Revenue Code.~~

~~(2) The change in the overpayment rate described in paragraph (1) shall apply as of the date on which the overpayment or overpayments specified in paragraph (1) become effective.~~

~~(3) This subdivision shall apply to refunds or credits allowed on or after the effective date of the act adding this subdivision.~~

~~SEC. 3.~~

~~SECTION 1. Section 19736 of the Revenue and Taxation Code is amended to read:~~

~~19736. (a) The Franchise Tax Board shall conduct a public outreach program and adequately publicize the tax amnesty program so as to maximize public awareness and to make taxpayers aware of the program. In addition, the Franchise Tax Board shall make taxpayers aware of the new and increased penalties associated with taxpayer failure to participate in the tax amnesty program.~~

~~(b) The Franchise Tax Board shall make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, will send written notice to taxpayers of their eligibility for the tax amnesty program. However, failure of the Franchise Tax Board to notify a taxpayer of the existence or correct amount of a tax liability eligible~~

1 for amnesty shall not preclude the taxpayer from participating in
2 the tax amnesty program, nor shall such failure be grounds for
3 abating the penalty imposed under paragraph (1) of subdivision
4 (a) of Section 19777.5 or the amnesty interest amount as defined
5 in paragraph (2) of subdivision (a) of Section 19777.5.

6 ~~SEC. 4.~~

7 *SEC. 2.* Section 19777.5 of the Revenue and Taxation Code is
8 amended to read:

9 19777.5. (a) (1) For amounts that are due and payable on the
10 last day of the amnesty period, there shall be added to the tax for
11 each taxable year for which amnesty could have been requested
12 an amount equal to 50 percent of the accrued interest payable under
13 Section 19101 for the period beginning on the last date prescribed
14 by law for the payment of that tax (determined without regard to
15 extensions) and ending on the last day of the amnesty period
16 specified in Section 19731.

17 (2) For amounts that become due and payable after the last date
18 of the amnesty period, for the period beginning on the last day
19 prescribed by law for the payment of the tax for the taxable year
20 (determined without regard to extensions) and ending on the last
21 day of the amnesty period specified in Section 19731, interest on
22 that amount shall be paid as provided under Section 19101 but at
23 a rate of 150 percent of the adjusted annual rate under Section
24 19521. The term “amnesty interest amount” means the difference
25 between the amount of interest imposed pursuant to the preceding
26 sentence and the amount of interest that would be imposed without
27 application of the preceding sentence.

28 (3) For purposes of paragraph (2), Sections 19107, 19108,
29 19110, and 19113 shall apply in determining the amount computed
30 under Section 19101.

31 (b) The penalty imposed by paragraph (1) of subdivision (a) is
32 in addition to any other penalty imposed under Part 10
33 (commencing with Section 17001), Part 11 (commencing with
34 Section 23001), or this part.

35 (c) This section does not apply to any amounts that are treated
36 as paid during the amnesty program period under paragraph (4)
37 of subdivision (a) of Section 19733 or paragraph (1) of subdivision
38 (b) of Section 19733.

39 (d) Article 3 (commencing with Section 19031), (relating to
40 deficiency assessments) shall not apply with respect to the

1 assessment or collection of any penalty imposed by paragraph (1)
2 of subdivision (a).

3 (e) (1) Notwithstanding Chapter 6 (commencing with Section
4 19301), a taxpayer may not file a claim for refund or credit for any
5 amounts paid in connection with the penalty imposed in paragraph
6 (1) of subdivision (a) or the amnesty interest amount as defined
7 in paragraph (2) of subdivision (a), except as provided in
8 paragraphs (2) and (3).

9 (2) A taxpayer may file a claim for refund for any amounts paid
10 to satisfy a penalty imposed under paragraph (1) of subdivision
11 (a) or the amnesty interest amount as defined in paragraph (2) of
12 subdivision (a) on the grounds that the amount was not properly
13 computed by the Franchise Tax Board.

14 (3) A taxpayer may file a claim for refund of amounts paid to
15 satisfy a penalty imposed under paragraph (1) of subdivision (a)
16 or the amnesty interest amount as defined in paragraph (2) of
17 subdivision (a) on the grounds that the failure of the Chief Counsel
18 of the Franchise Tax Board, or his or her designee, to abate the
19 amount, in whole or in part, under the authority of Section 19777.6
20 was an abuse of discretion.

21 (f) Notwithstanding Section 18415, the amendments made to
22 this section by the act amending this subdivision and Chapter 398
23 of the Statutes of 2005 shall apply to amounts imposed under
24 paragraph (2) of subdivision (a) after March 31, 2005.

25 ~~SEC. 5.~~

26 *SEC. 3.* Section 19777.6 is added to the Revenue and Taxation
27 Code, to read:

28 19777.6. (a) (1) Only the Chief Counsel of the Franchise Tax
29 Board, or his or her designee, may abate all or any portion of a
30 penalty imposed under paragraph (1) of subdivision (a) of Section
31 19777.5 or an amnesty interest amount as defined in paragraph (2)
32 of subdivision (a) of Section 19777.5 if any of the following
33 applies:

34 (A) The taxpayer demonstrates that the underpayment upon
35 which the penalty or amnesty interest amount was based, or a
36 portion thereof, was attributable to the treatment of an item for
37 which there was substantial authority, within the meaning of
38 Section 6662 of the Internal Revenue Code and the regulations
39 thereunder.

1 (B) The penalty or amnesty interest amount, or a portion thereof,
2 is based upon an underpayment resulting from a change or
3 correction by the Commissioner of the Internal Revenue Service,
4 or other officer of the United States, and the taxpayer was first
5 contacted by the Internal Revenue Service concerning an
6 examination of the return after the last day of the amnesty period
7 specified in Section 19731.

8 (C) If taking into account all the facts and circumstances, it is
9 against equity and good conscience to hold the taxpayer liable for
10 the penalty or amnesty interest amount, or any portion thereof.

11 (2) The State Board of Equalization's determination on an appeal
12 from the action of the Franchise Tax Board on a claim for refund
13 filed pursuant to paragraph (3) of subdivision (e) of Section
14 19777.5 shall be limited to whether the failure of the Chief
15 Counsel, or his or her designee, to abate all, or any portion, of a
16 penalty imposed under paragraph (1) of subdivision (a) of Section
17 19777.5 or the amnesty interest amount as defined in paragraph
18 (2) of subdivision (a) of Section 19777.5 was an abuse of
19 discretion.

20 (b) Notwithstanding Section 18415, this section applies to
21 amounts imposed under subdivision (a) of Section 19777.5 after
22 March 31, 2005.

23 ~~SEC. 6.~~

24 *SEC. 4.* Section 19777.7 is added to the Revenue and Taxation
25 Code, to read:

26 19777.7. (a) In determining the amount subject to the increased
27 interest rate imposed pursuant to paragraph (2) of subdivision (a)
28 of Section 19777.5, the amount that would otherwise be subject
29 to that rate of interest shall be reduced by any final amount, or
30 portion thereof, that is attributable to a change in interpretation of
31 a law or rule of law by a regulation, legal ruling of counsel, within
32 the meaning of subdivision (b) of Section 11340.9 of the
33 Government Code, or a published federal or California court
34 decision that becomes final after the last day of the amnesty
35 program period specified in Section 19731 for taxable years
36 beginning before January 1, 2003.

37 (b) The Franchise Tax Board shall implement this section in a
38 reasonable manner.

1 (c) Notwithstanding Section 18415, this section applies to
2 amounts imposed under subdivision (a) of Section 19777.5 after
3 March 31, 2005.

4 ~~SEC. 7.~~

5 *SEC. 5.* Section 19777.8 is added to the Revenue and Taxation
6 Code, to read:

7 19777.8. (a) The amnesty interest amount, as defined in
8 paragraph (2) of subdivision (a) of Section 19777.5, shall only
9 apply to the extent the aggregate of final amounts described in that
10 paragraph exceed 110 percent of the sum of any tax deposits made
11 by a taxpayer within the meaning of Section 19041.5 on or before
12 the end of the tax amnesty program period specified in Section
13 19731.

14 (b) Notwithstanding Section 18415, this section applies to
15 amounts imposed under subdivision (a) of Section 19777.5 after
16 March 31, 2005.

17 ~~SEC. 8.~~

18 *SEC. 6.* If a refund or credit of any overpayment resulting from
19 the amendments of this act, adding paragraph (3) to subdivision
20 (e) of Section 19777.5 of the Revenue and Taxation Code, and
21 adding Sections 19777.6, 19777.7, and 19777.8 to the Revenue
22 and Taxation Code, is barred by operation of Section 19306 of the
23 Revenue and Taxation Code at any time before the close of the
24 one-year period beginning on the effective date of this act, that
25 refund or credit may nevertheless be made or allowed if a claim
26 therefore is filed before the close of that one-year period, or if
27 before the close of that one-year period the Franchise Tax Board
28 allows a credit or makes a refund.